

Adam Pollock  
POLLOCK COHEN LLP  
111 Broadway, Ste. 1804  
New York, NY 11211  
Tel.: (212) 337-5361  
Email: adam@pollockcohen.com

Roger W. Wenthe (SBN 8920)  
ROGER WENTHE, PLLC  
2831 St. Rose Pkwy. # 200  
Henderson, NV 89052  
Tel.: (702) 971-0541  
Email: roger.wenthe@gmail.com

*Counsel for Marlena Sonn*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

KPG INVESTMENTS INC. and  
KENDALLE GETTY,  
*Plaintiffs,*  
v.  
MARLENA SONN,  
*Defendant.*

MARLENA SONN,  
*Plaintiff,*  
v.  
KENDALLE P. GETTY, as Trustee of the  
Pleiades Trust and as an individual, KPG  
INVESTMENTS INC., as Trustee of the  
Pleiades Trust, ALEXANDRA SARAH  
GETTY, as Trustee of the Pleiades Trust and  
as an individual, ASG INVESTMENTS INC.,  
as Trustee of the Pleiades Trust, MINERVA  
OFFICE MANAGEMENT, INC. and  
ROBERT L. LEBERMAN,  
*Defendants.*

**DEFENDANT  
MARLENA SONN'S  
RULE 12 (PARTIAL)  
MOTION TO DISMISS**

Consolidated Actions

Case No. 3:22-cv-00236-ART-CLB  
(Lead)  
(the "KPG Complaint")

Case No. 3:22-cv-00323-ART-CLB  
(Consolidated)  
(the "Sonn Complaint")

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## INTRODUCTION

Pursuant to Rule 12(b)(6), defendant (and plaintiff in the consolidated action) Marlenna Sonn moves to dismiss certain claims alleged by plaintiffs (and consolidated action defendants) KPG Investments Inc. and Kendalle Getty in the “KPG Complaint” (3:22-cv-00236). As detailed below, the KPG Complaint fails to specify the level of detail necessary to support its allegations of fraud, as required by Rule 9(b); includes claims that are duplicative (and which should therefore be dismissed), implausible (because they are either contradicted or undermined by other alleged facts), or are not claims at all, but simply forms of requested relief.

This case arises from an employment relationship gone sour. As set forth in the “Sonn Complaint” (3:22-cv-00323), Marlenna Sonn was punished for voicing disapproval about what she observed and understood to be an unlawful tax-evasion scheme, and for urging her employers to reverse course or undertake appropriate corrective measures. After working as a trusted financial advisor to members of the Getty family and substantially increasing the value of their trust portfolios by hundreds of millions of dollars over a period of approximately seven years, Ms. Sonn was unceremoniously terminated and subsequently denied compensation that she had already earned while working for the family—in direct retaliation for raising concerns about the legality of their questionable “tax planning” strategies.

At bottom, the parties’ dispute is one based in breach of contract—one where Plaintiffs unlawfully breached their employment agreement with Ms. Sonn and wrongfully terminated her. And for the reasons stated below, this Court should reject Plaintiffs’ kitchen sink claims—essentially, their counterclaims to Ms. Sonn’s affirmative claims—that have been asserted against her, and grant Ms. Sonn’s instant motion in its entirety.

**I. FACTUAL BACKGROUND**

**A. The Getty Defendants<sup>1</sup>**

Defendants Kendalle P. Getty (“Kendalle”) and Alexandra Sarah Getty (“Sarah”) are granddaughters of the oil tycoon, Jean Paul Getty, and heirs to his multi-billion-dollar fortune through their father, Gordon P. Getty (“Gordon”), via their interest as beneficiaries in the Pleiades Trust. The Pleiades Trust is one of several successor trusts to the original Getty Family Trust, a California trust that was originally established in 1934. The Pleiades Trust was established for the benefit of Gordon during his lifetime, and for the benefit of his three daughters as contingent beneficiaries upon his passing.

In or around 1995, the administration of the family trusts was transferred from California to Nevada, in order to avoid paying California state taxes on trust income.<sup>2</sup> To effectuate this strategy, each individual trust beneficiary was assigned a corporate trustee (*i.e.*, a Nevada-based

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<sup>1</sup> We refer to the Sonn Complaint Defendants in the consolidated action, No. 3:22-cv-00323-ART-CLB. This factual background is largely drawn from Ms. Sonn’s affirmative complaint. Of course, in evaluating this motion to dismiss, Ms. Sonn understands that this Court must accept as true all of the factual allegations contained in the complaint, to the extent that there is “enough factual matter” and “more than [just] labels and conclusions.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 556 (2007).

<sup>2</sup> The State of Nevada does not levy income taxes on individuals or corporations (or trusts). In addition, Nevada is one of only two states in the country that does not have an information sharing agreement with federal tax authorities at the Internal Revenue Service. Consequently, Nevada has become an increasingly notorious tax haven with financial secrecy protections similar to those typically associated with offshore jurisdictions. *See, e.g.*, Brian Grow, Kelly Carr, *Special Report: Nevada’s Big Bet on Secrecy*, Reuters (Sept. 26, 2011), <https://www.reuters.com/article/us-shell-games-nevada/special-report-nevadas-big-bet-on-secrecy-idUSTRE78P1Y020110926>; J. Weston Phippen, *Nevada, a Tax Haven for Only \$174*, *The Atlantic* (Apr. 6, 2016), <https://www.theatlantic.com/national/archive/2016/04/panama-papers-nevada/476994/>; *see also* Iain Marlow, *South Dakota and Nevada Play Surprisingly Large Role in Pandora Papers Tax Avoidance Leak*, *Fortune* (Oct. 4, 2021), <https://fortune.com/2021/10/04/south-dakota-nevada-play-large-role-in-pandora-papers-tax-avoidance-leak/>.

1 corporation formed with such beneficiary's initials) for the purpose of residing in and serving as  
2 trustee from the State of Nevada in their stead. Defendants KPG Investments Inc. and ASG  
3 Investments Inc. are the Nevada-based corporations that serve as trustees of the Pleiades Trust  
4 for Kendalle and Alexandra Sarah, respectively—both of whom are lifelong California residents.

5 Defendant Minerva Office Management, Inc. is a Nevada corporation that functions as  
6 the administrative office for the Pleiades Trust and several other successor trusts to the original  
7 Getty Family Trust. Defendant Robert L. Leberman is President of Minerva and serves as Trust  
8 Administrator for the Pleiades Trust.<sup>3</sup>

9 **B. Ms. Sonn's work at Christopher Street Financial**

10 Ms. Sonn was introduced to Kendalle in April 2013 through a mutual acquaintance in  
11 San Francisco. At the time, Kendalle and Ms. Sonn both lived in New York, and Ms. Sonn was  
12 working as a Financial Advisor at Christopher Street Financial, Inc., where she was known for  
13 her socially responsible investing. Kendalle had not been actively overseeing her personal  
14 investments at Goldman Sachs, but sought to align her portfolio with her progressive values. She  
15 joined Ms. Sonn's client roster with a relatively small portfolio and agreed to have Ms. Sonn  
16 invest her funds in a manner consistent with Kendalle's interests and values. Over the next few  
17 months, the values-aligned portfolio that Ms. Sonn created consistently outperformed market  
18 benchmarks. Kendalle eventually transferred her personal investments from Goldman Sachs to  
19 Christopher Street and recommended Ms. Sonn to her sister, Sarah.

20 \_\_\_\_\_  
21 <sup>3</sup> Mr. Leberman is also Chief Executive Officer of the San Francisco based family office and  
22 investment fund which manages the Getty family's related assets, and serves as an officer,  
23 director, and/or agent of several other corporations formed by or for various members of the  
24 Getty family. In addition, Mr. Leberman is Chief Executive Officer of The Ann and Gordon  
Getty Foundation, a California nonprofit for which Kendalle and Sarah serve on the Board of  
Directors, along with their father.

**C. Ms. Sonn undertakes a more formal role in management as Vice President of ASG and KPG Investments**

The sisters were so pleased and impressed with Ms. Sonn's performance as their personal financial advisor that they eventually sought to employ her full-time as the principal advisor for their interests in the Pleiades Trust, which represented a much larger portion of their personal wealth than any of their investment accounts with Christopher Street.

In October 2014, Ms. Sonn left Christopher Street and assumed the role of ASG Investments' Vice President. Her responsibilities included attending all Trust meetings and voting on Sarah's behalf when necessary, consulting on investment strategies and related financial planning matters, procuring and supervising various professionals to file tax returns and maintain corporate registrations, and managing in part Sarah's personal affairs, including miscellaneous business ventures, art projects, and real estate and property management related tasks. Ms. Sonn initially received a base salary of \$80,000, and an annual discretionary performance-based bonus.

Ms. Sonn soon started performing these same functions for Kendalle and KPG Investments, although she was not formally appointed (or compensated) as Vice President for KPG Investments until about a year later, on November 1, 2015. *See* KPG Compl. ¶ 9 & Ex. 1.

In addition to assuming these two roles, Ms. Sonn continued to serve as a personal financial advisor for both Kendalle and Sarah, and received a standard 1% fee on "assets under management" (AUM) for managing their personal investment accounts (which remained separate from the Pleiades Trust)—i.e., the same fee Ms. Sonn had previously charged while working at Christopher Street.



**D. Ms. Sonn excels in her role; receives deferred compensation.**

In her capacity as Vice President of ASG Investments and KPG Investments, Ms. Sonn encouraged and empowered Kendalle and Sarah to assert their interests and opinions on matters relating to the Pleiades Trust. In early 2015, for example, Ms. Sonn retained a trust and estates attorney from the New York office of Patterson Belknap Webb & Tyler LLP (Jennifer Brown, Esq.) as outside counsel to KPG Investments, so that Kendalle would have an independent legal advisor representing her interests (instead of having to rely on the counsel of attorneys employed by her father or other family members).

Later that same year, Kendalle and Sarah directed Ms. Sonn to (a) lead the charge in removing the management of the Pleiades Trust's portfolio investments from the trust's existing investment advisor—despite substantial opposition from Mr. Leberman and others; and (b) to shift the Trust's investment strategy to align with the sisters' values (*e.g.*, divestment from fossil fuels and companies with questionable human rights records, attention to ESG (environmental, social and governance) ratings, etc.)—a strategy similar to the one Ms. Sonn applied to the sisters' personal investments. These efforts soon bore fruit. The investment strategies that Ms. Sonn devised and implemented with the Pleiades Trust portfolio significantly outperformed those of the Orpheus Trust (a trust created for Gordon Getty's sons), which had remained under the previous management.

Despite these successes, however, Ms. Sonn's total annual compensation remained small in comparison to other individuals who performed similar functions for the Pleiades Trust. As a result, Ms. Sonn asked Kendalle and Sarah in mid-2017 to reconsider her compensation structure—in part, to better reflect her growing scope of duties as Vice President of the corporate trustee entities she was managing. In fact, Ms. Sonn's compensation was well below industry standards for other similarly situated professionals performing similar work. (KPG Compl. ¶ 15.)

1 The sisters were receptive to the request; they recognized that Ms. Sonn's compensation did not  
2 accurately reflect the value of her contributions and realized the need to correct that in order to  
3 retain her talents as an employee.

4 Each sister agreed to provide Ms. Sonn with supplemental deferred compensation  
5 incentives equal to 25 basis points (.0025%) of the total aggregate after-tax value of the Pleiades  
6 Trust, to be paid out from their trust distributions upon their father's passing.<sup>4</sup> (*Id.* ¶¶ 17–19.)  
7 (Taken together, the incentives to be paid by both sisters amounted to 50 basis points (.0050%)  
8 on the total aggregate after-tax value of the Pleiades Trust.) In closing, this letter agreement  
9 stated the following: “KPG and I look forward to continuing our great work together. Sincerely,  
10 Kendalle P. Getty[,], Sole Director, KPG Investments Inc.” KPG Compl. Ex. 2, at 2.

11 This incentive structure was designed to bring Ms. Sonn's compensation in line with  
12 industry standards,<sup>5</sup> while also accommodating the sisters' desire to defer payouts until such time  
13 as they gained access to the trust corpus. And although Ms. Sonn would have preferred to  
14 structure these incentives as paying out on an annual basis, she ultimately agreed to the  
15 proposal—based, in part, on her understanding that the triggering event (*i.e.*, Gordon's passing)  
16 was imminent, due to his advanced age and deteriorating health.

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18  
19  
20 <sup>4</sup> See Incentive Award Letters from ASG and KPG Investments with Bonus Schedule (Nov. 10, 2017), KPG Compl. Ex. 2.

21 <sup>5</sup> Compensation for financial advisory services is typically charged as a percentage-based annual  
22 fee on total assets under management (AUM). The standard industry rate is based on 1% of  
23 AUM (*i.e.*, 100 basis points) for personal wealth management and averages around .54% of  
24 AUM (*i.e.*, 54 basis points) for institutional portfolios. *See, e.g.*, U.S. News, *What to know about Financial Advisor Fees and Costs* (Jan. 19, 2023), <https://money.usnews.com/financial-advisors/articles/financial-advisor-fees-and-costs>.

1 Over the course of the next few years, Ms. Sonn continued on the same trajectory,  
2 consistently exceeding expectations and outperforming the market, while continuously serving as  
3 a loyal advocate for Kendalle and Sarah’s interests. And as a result, the value of the Pleiades  
4 Trust grew from approximately \$600 million in 2013 to over \$1 billion in 2021—  
5 notwithstanding generous annual income distributions to Gordon during that period. And  
6 although the sisters were not yet entitled to distributions from the trust, the growth of the  
7 portfolio owing to Ms. Sonn’s successful investment strategies ultimately benefited them as the  
8 contingent remainder beneficiaries of accumulated trust income, which they would fully inherit  
9 upon their father’s passing.

10 **E. Ms. Sonn was subjected to unlawful retaliation after raising concerns about**  
11 **avoidance of California taxes on trust income.**

12 Throughout Ms. Sonn’s time working on the Pleiades Trust, Mr. Leberman and others  
13 repeatedly advised Ms. Sonn about the importance of maintaining the *appearance* that Kendalle  
14 and Sarah were neither residing, nor conducting trust business, in the State of California. This  
15 was because a major purpose of creating the Nevada corporate trust entities in 1995 was to  
16 maintain the impression that the trusts resided and were administered outside California.<sup>6</sup>

17 The viability of this estate planning strategy was, at best, questionable from the outset,  
18 because Gordon—the only non-contingent beneficiary of these trusts—is a lifelong California  
19 resident who continually maintained his principal residence in California throughout most, if not

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21 <sup>6</sup> As is relevant here, California law provides that the taxation of trusts is governed by the  
22 residence of its beneficiaries and fiduciaries; specifically, the income of a trust is taxable in  
23 California if a “fiduciary or [non-contingent] beneficiary ... is a resident, regardless of the  
24 residence of the settlor,” or in the case of a corporate fiduciary like KPG Investments, “where the  
corporation transacts the major portion of its administration of the trust” in California. (Cal. Rev.  
& Tax. Code § 17742.)

1 all, of his adult life. The objective of this strategy was to defer and limit the taxation of  
2 accumulated trust income until the time of distribution, at which point, under California’s  
3 “throwback” rule (Cal. Rev. & Tax. Code § 17745(b)), it would only become taxable if the  
4 beneficiary was a resident of California at the time of distribution, and only to the extent that the  
5 beneficiary was also a resident of California at the time the distributed income was accumulated.

6 The sisters’ place of residence became an increasingly frequent topic of conversation in  
7 2016. Kendalle had moved from New York, began travelling, and eventually returned to Los  
8 Angeles in 2017. Kendalle, however, was hesitant to buy a residence there in her own name  
9 because she worried that doing so would subject the Pleiades Trust to California state income  
10 tax. Sarah was maintaining a residence in Japan, and expressed frustrations about having to  
11 factor potential tax liabilities into decisions about how and where she spent her time. During  
12 these conversations, Ms. Sonn observed that Kendalle and Sarah’s discomfort around these  
13 issues was less about their own desire to avoid paying California state taxes on trust income and  
14 more about their hesitancy to oppose the recommendations of their father’s trusted advisors on  
15 the subject. It was equally clear that these issues were becoming a major source of stress and  
16 anxiety, for Kendalle especially, in making decisions about where and how to live her life.

17 Based on the foregoing, Ms. Sonn was increasingly of the view that Kendalle and Sarah  
18 should simply live and do business wherever they pleased, without having to participate in the  
19 charade that the Pleiades Trust was being administered from Nevada—even if that meant bearing  
20 the tax burden of paying California income tax on trust income. Ms. Sonn conveyed these views  
21 to Kendalle and Sarah. Mr. Leberman did not appreciate Ms. Sonn’s perspective, however, given  
22 that his entire value proposition was minimizing the family’s tax liabilities through precisely  
23 these types of estate planning strategies.

1                   1)       *Controversy over legality of California tax avoidance strategy*

2                   Concerns about the Pleiades Trust’s fictional placement in Nevada came to a head in  
3 2018. Nicolette (another Getty daughter and beneficiary of the Pleiades Trust) began to openly  
4 question whether the trust’s administration should be moved back to California. *See* Sonn  
5 Compl. ¶¶ 69–110.<sup>7</sup> In the end, however, Mr. Leberman convinced each Getty family member,  
6 except for Kendalle, that keeping the trust in Nevada would inure to their benefit.

7                   Then, in May 2019, Nicolette sought to pursue an additional tax avoidance scheme. But  
8 Ms. Sonn only grew more skeptical. “I definitely don’t want the expectation to be built up that  
9 you can live in CA and not pay the tax,” she stated, in a subsequent email exchange on May 30,  
10 2019. “Just pay it if you’re staying in CA, it[’]s fine. Really. Just enjoy your time there.”

11                  Then, in 2020 and into 2021, because of the COVID-19 pandemic, the family was unable  
12 to hold their trust meetings in Nevada. Instead, they took place by Webex, with all or most of the  
13 trustees and beneficiaries calling in from California. Mr. Leberman assured everyone that this  
14 was fine due to the shelter in place orders that had been issued in California and Nevada at the  
15 beginning of the pandemic. But even after these orders were withdrawn, the meetings continued  
16 via Webex, with most beneficiaries and trustees attending from California. And Ms. Sonn  
17 continued to encourage Kendalle and her sisters to simply pay the required taxes.

18                  But, over time, Kendalle also became more comfortable with the status quo and began to  
19 discourage Ms. Sonn from raising her objections and concerns about the California tax avoidance  
20 scheme. When Ms. Sonn informed Kendalle that the shelter in place orders had been lifted and  
21 suggested they not attend meetings via Webex from California, for example, Kendalle—texting  
22 \_\_\_\_\_

23 <sup>7</sup> While too long for the page constraints herein, Ms. Sonn’s complaint includes substantial detail  
24 of the parties’ emails and text messages on this topic.

1 with Ms. Sonn from California—essentially told Ms. Sonn to let it go, because Mr. Leberman  
 2 always gets his way, whether his activities are illegal or not. Thus, although the sisters were  
 3 originally aligned with Ms. Sonn in voicing objections to the dubious tax avoidance scheme, it  
 4 became increasingly clear that a shift had occurred by late 2019, and into 2020 and 2021, and  
 5 that Ms. Sonn’s dissenting views on the matter were no longer welcome.

6                   2)       *Wrongful retaliatory discharge from ASG Investments*

7           On January 27, 2021, Ms. Sonn was terminated from her role as the Vice President for  
 8 ASG Investments. Ms. Sonn was surprised by this because, at the Trust meeting the day before,  
 9 Sarah had just thanked her for doing such an excellent job. When asked to elaborate on her  
 10 reasons, Sarah stated that the decision had nothing to do with Ms. Sonn’s performance, but was a  
 11 result of interpersonal conflicts and differences of opinion between Kendalle and the other  
 12 trustees. Sarah indicated that she intended to do right by Ms. Sonn, by providing a severance  
 13 package that would honor the spirit of the 2017 deferred compensation agreement, which was  
 14 rendered void in the event of a premature termination or departure.

15           From:       [Sarah]  
 16           To:           [Ms. Sonn]  
 17           Date:       Wednesday, January 27, 2021 at 4:49 PM  
 18           RE:           What we discussed earlier

19           Yesterday was a wonderful victory, and I’m grateful for your patience with  
 20 Nicolette.

21           After the meeting, dad called me, though, saying he’d like me to participate  
 22 more and I agree. I have thought long and hard about this, and I’ve come  
 23 to this conclusion.

24           Marlena, let me preface this by stating this is by no means a reflection of  
 your skill, conduct or performance as my VP.

          However, as I discussed with you on the phone, in order to avoid KPG as  
 much as possible, be a more active player in the Trust, and to avoid any  
 further social stresses that occur being divergent opinions you and my best  
 friend, Nicolette have, I have decided to release you as a VP. I am willing  
 to negotiate a severance package, but I do not believe the former  
 agreement applies given that the amount at termination would be  
 independent of your efforts for me after this point. I love you and would

1 love to have you still be my personal financial advisor, but I would like to  
2 terminate your contract as a VP for ASG investments.

3 Thank you for all you've done.

4 (emphasis added).

5 Consistent with their original agreement, Sarah agreed to provide a severance package  
6 that would include a payout of Ms. Sonn's deferred compensation incentive equal to 25 basis  
7 points (.0025%) of the portfolio value of the Pleiades Trust as of December 31, 2020. The only  
8 outstanding issue, according to Sarah, was whether the payment could be made in installments.  
9 Several other emails were exchanged thereafter, in which Sarah and Ms. Sonn expressed  
10 affection and good-will towards one another, and in which Ms. Sonn agreed to a two-year  
11 schedule. Sarah confirmed that the agreement and indicated that she was just awaiting a response  
12 from Mr. Leberman regarding the most optimal schedule and timing for the disbursements.

13 The following week however, Sarah retracted her proposal, as reflected in this series of  
14 emails accusing Ms. Sonn of misconduct in the severance negotiations. But what Ms. Sonn had  
15 asked for (and what Sarah had previously agreed to) was not unreasonable; it was consistent with  
16 the 2017 deferred compensation agreement (which had never been questioned), and was also,  
17 notably, less than market rate for comparable work.

18 As alleged in Ms. Sonn's complaint, Mr. Leberman—who had been openly hostile  
19 towards Ms. Sonn ever since she first voiced her opposition to the California tax avoidance  
20 scheme—was responsible for bringing about Sarah's sudden change in posture, which he did by  
21 manufacturing a laundry list of unwarranted accusations questioning Ms. Sonn's ethics for  
22 requesting just compensation.  
23  
24

1                   3)     *Ms. Sonn seeks assurances from Kendalle; remains loyal and dedicated,*  
2                         *but is ultimately discharged from KPG Investments.*

3             Despite being terminated by Sarah from ASG Investments in January 2021, and despite  
4     the increasing tension and hostility directed at her by Mr. Leberman and others, Ms. Sonn  
5     continued to excel in her role as Vice President of KPG Investments.

6             On March 1, 2021, Ms. Sonn spoke with Kendalle about wanting to confirm the deferred  
7     compensation incentives that they had originally agreed upon back in 2017, in light of these  
8     circumstances. (KPG Compl. ¶ 25.) The conversation was motivated by several factors,  
9     including the fact that the triggering event (*i.e.*, Gordon’s passing) had not yet occurred—and in  
10    recognition of Ms. Sonn’s continued loyalty and exceptional performance, in the midst of what  
11    had essentially become a hostile work environment. Ms. Sonn also understandably wanted some  
12    level of assurance that Kendalle would honor the deferred compensation arrangement that they  
13    had agreed upon in 2017—irrespective of when Gordon died and/or whether Ms. Sonn was still  
14    actively employed by KPG Investments when that time came. (Under the 2017 agreement, the  
15    compensation would only be paid if Ms. Sonn were still employed at the time of Gordon’s  
16    passing. This meant that KPG could terminate Ms. Sonn—and the compensation—at any time.  
17    Consequently, Ms. Sonn could have potentially worked for years and then, on Gordon’s death  
18    bed, Kendalle could have terminated Ms. Sonn and, under the agreement, owed nothing.)

19            Under the revised compensation agreement, Ms. Sonn agreed to limit her upside by  
20    taking a fixed amount instead of ultimately receiving a percentage of the trust value. (KPG  
21    Compl. ¶¶ 30–34.) Indeed, if the percentage allocated under the 2017 agreement were applied to  
22    the Trust value in 2021, the compensation would have exceeded the fixed, agreed-upon  
23    compensation under the 2021 agreement, and it would likely have grown from there. That is, the  
24    new agreement meant that Ms. Sonn would likely be paid *less* than under the existing agreement.



1 In return, Ms. Sonn received certainty: the earned compensation would be paid, without the risk  
2 that she could be terminated after years of work and receive no compensation.

3 In response to Ms. Sonn’s request, Kendalle allegedly expressed to Ms. Sonn that the  
4 amount was “quite steep, and asked for time to think about the request.” (KPG Compl. ¶ 44.)  
5 Through unspecified “oral conversations and written communications”—none of which include  
6 any specific dates, means of communication (e.g., email, phone call, text message, etc.), or  
7 locations—Ms. Sonn is then alleged to have asked Kendalle to “hurry and sign” the Second  
8 Incentive Award letter agreement. *Id.* ¶ 45. (The actual agreement was signed more than two  
9 weeks later.)

10 As with the previous negotiations over Ms. Sonn’s compensation, Kendalle’s principal  
11 concern was actually not about whether the *amount* was appropriate, but rather *when* the  
12 payments would be disbursed. Ms. Sonn reasoned that the payment should be made as soon as  
13 practicable, as earned compensation for her outstanding past performance and based on the value  
14 of the Pleiades Trust portfolio over that time period. Kendalle did not disagree, but wanted to  
15 defer these payments (over a period of time to manage cashflow). They settled on a middle  
16 ground, agreeing that the \$2.5 million payment would be paid out in three installments of  
17 \$833,333, over the course of the next three years. (KPG Compl. ¶¶ 26, 30 & Ex. 3.) Since this  
18 was merely a *deferred* payment for compensation that Ms. Sonn had already earned, the  
19 amendment included an acceleration clause that would be triggered if KPG Investments was  
20 dissolved and/or in the event of an early termination at any time prior to the final disbursement  
21 date.<sup>8</sup>

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22  
23 <sup>8</sup> Although not resolvable on a motion to dismiss, the KPG Complaint falsely alleges that Ms.  
24 Sonn discouraged Kendalle from consulting legal counsel in connection with the decision to

(continued...)

1 According to the new narrative in the KPG Complaint, Ms. Sonn allegedly “falsely  
2 represented” to Kendalle that the terms contained within this new letter were standard, fair,  
3 justified, and in the best interests of KPG Investments and Kendalle. (KPG Compl. ¶¶ 28, 40.) At  
4 the time, Kendalle was purportedly “experiencing extremely stressful issues in her personal  
5 life”—what exactly those issues were is unclear. (*Id.* ¶ 42.) And, Ms. Sonn purportedly  
6 represented orally that the award total would be \$2 million (and not \$2.5 million). (*Id.* ¶ 43.)

7 Notably, however, no further details are provided regarding how Ms. Sonn came to know  
8 about the unidentified “stressful issues” in Kendalle’s personal life (e.g., the time, date, place, or  
9 means by which such information was purportedly shared). *See* KPG Compl., generally.  
10 Similarly, any further details concerning Ms. Sonn’s purported misrepresentation of the total  
11 award amount—i.e., the time, date, location, or means by which such information was shared  
12 (e.g., by video call, phone, in-person, etc.)—are absent. *See id.*

13 On March 17, 2021, Kendalle signed the Second Incentive Award Letter, *see id.* ¶ 51, in  
14 her capacity as “Sole Director, KPG Investments Inc.,” and noted in closing the following: “I  
15 look forward to continuing our great work together.” (KPG Compl., Ex. 3, at 2.) The first  
16 \$833,333 installment was paid on March 31, 2021, without any problems, concerns, or  
17 indications of ill-will from Kendalle, but the remaining installments were never paid.

18  
19  
20  
21 execute the revised agreement. This allegation is simply false. To the contrary, Ms. Sonn had  
22 originally talked with Kendalle about a revised agreement around March 1, 2021, and  
23 encouraged her to review the letter, once drafted, with counsel at the Patterson Belknap law firm.  
24 They continued to talk in mid-March (anyway, they spoke and texted very regularly); and the  
agreement was eventually signed on March 17, 2021. Certainly, there was plenty of opportunity  
to consult counsel.

4) *Ms. Sonn was unlawfully terminated in retaliation*

Following this payment—i.e., at some unidentified date, time, or location—some “various interested individuals associated with Plaintiff Getty”—none of whom are identified—“learned of the Second Incentive Award Letter’s terms” and informed Kendalle that “the terms were, in fact, [allegedly] unusual.” (KPG Compl. ¶ 56.) No additional facts are provided, however, to explain why such terms were purportedly “unusual”—only conclusions.<sup>9</sup>

Nonetheless, Kendalle then allegedly formed the belief that she had been taken advantage of. (*Id.* ¶ 57.) And on November 30, 2021, plaintiffs KPG Investments and Kendalle notified Ms. Sonn that they were terminating her employment. (*Id.* ¶ 58.) The letter alleged, in sum and substance, that Ms. Sonn had breached her fiduciary duties by asking Kendalle to revisit and confirm the terms of the deferred compensation agreement, and it made vague references to various unspecified misrepresentations and/or acts of supposed coercion.

\* \* \*

<sup>9</sup> As detailed in the Sonn Complaint (¶¶ 122–26), on September 18, 2021, the previous Treasurer and Secretary of KPG Investments, Francis Nash, passed away after a long battle with cancer. Mr. Leberman then confronted Kendalle about the payment to Ms. Sonn and used this event as a justification for getting rid of Ms. Sonn once and for all. Simply put, Kendalle was essentially strong-armed into going along with Mr. Leberman’s plan. She did so, in part, because she was worried that he might attempt to have her placed under a conservatorship if she didn’t, by portraying her well-considered decision to confirm Ms. Sonn’s compensation incentives as evidence that she was supposedly not of sound mind.

In a follow up call between Ms. Sonn, Kendalle, and Ms. Brown, Kendalle conveyed her concerns about not wanting to give Mr. Leberman any reason to have her placed under a conservatorship and noted that Ms. Brown had also characterized the payment as being “unusual.” When Ms. Sonn asked Ms. Brown whether she agreed with this characterization, she said something to the effect that “yes, but your role is also unusual,” and “no one is saying that you shouldn’t be compensated accordingly.” The call ended with Kendalle saying that she wanted to revisit the revised compensation incentive agreement but would consider a commensurate increase in Ms. Sonn’s salary. Kendalle also said she wanted Ms. Sonn to have health care and retirement benefits.

Over the course of her employment with the Getty Defendants, Ms. Sonn was personally responsible for overseeing the growth of the Pleiades Trust from approximately \$600 million to well over \$1 billion, nearly *doubling* its value, notwithstanding generous annual payouts of accumulated trust income. Meanwhile, the Getty Defendants have refused to honor their original agreements to compensate Ms. Sonn based on the value that she delivered to the trust. They have defaulted on their commitment to substitute those agreements with confirmatory agreements, *even after* Ms. Sonn agreed to accept a smaller, fixed amount from each sister.

## **II. PROCEDURAL BACKGROUND**

From these events, the parties have since brought various suits. On March 17, 2022, KPG Investments, Inc. and Kendalle Getty filed suit against Ms. Marlena Sonn, and alleged claims for (a) breach of the fiduciary duty; (b) fraudulent / intentional misrepresentation; (c) negligent misrepresentation, (d) fraudulent inducement, unconscionability, and undue influence; (e) contractual breach of the implied covenant of good faith and fair dealing; (f) tortious breach of the implied covenant of good faith and fair dealing; (g) unjust enrichment, in the alternative; and (h) declaratory judgment. *See* KPG Compl. ¶¶ 59–126 (ECF No. 1-2); *see also* July 27, 2022 Order (ECF No. 16) (complaint had originally been filed in Washoe County District Court and later removed to this Court on May 26, 2022, as Case No. 3:22-cv-00236).

On May 11, 2022, Ms. Sonn filed an action against KPG Investments, Kendalle, and others, alleging claims for (a) unlawful retaliation, in violation of California Labor Code sec. 1102.5; (b) breach of contract, as against ASG Investments, Inc.; (c) quantum meruit, as against Alexandra Sarah Getty and ASG Investments, Inc.; (d) breach of contract, as against plaintiff KPG Investments, Inc.; (e) quantum meruit, as against Kendalle and KPG Investments; (f) unjust enrichment; and (g) tortious interference, willful misfeasance and bad faith. *See Sonn v. Kendalle Getty et al.*, No. 1:22-cv-02758 (E.D. N.Y.), Compl. (ECF No. 1).

1 The parties then agreed to transfer that action to this judicial district, *see* 3:22-cv-00323-  
2 LRH-CLB, and this Court consolidated these two actions under the case number of the first-filed  
3 case, *KPG Investments, Inc., et al. v. Marlena Sonn*, No. 3:22-cv-00236-ART-CLB. *See* July 27,  
4 2022 Order (ECF No. 16). This Court further directed the parties to participate in a settlement  
5 conference. *See id.*

6 On January 18, 2023, Magistrate Judge Robert A. McQuaid Jr. held a settlement  
7 conference with the parties. *See* Minutes of Proceedings (ECF No. 38). The parties, however,  
8 were unable to resolve their differences. As a result, defendant (and consolidated action plaintiff)  
9 Marlena Sonn now brings this Rule 12(b)(6) motion to dismiss.

#### 10 ARGUMENT

11 As noted above, this dispute revolves around a breach of an employment agreement.  
12 Plaintiffs KPG Investments and Kendalle have applied a kitchen sink approach to gin up a  
13 number of claims that on their face, fail to state a claim under Rules 9 and 12. Accordingly, this  
14 Court should grant Ms. Sonn’s motion to dismiss in its entirety.

15 Where a plaintiff’s complaint fails to state a claim upon which relief can be granted,  
16 dismissal is appropriate under Rule 12(b)(6). *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555  
17 (2007). A pleading must give fair notice of a legally cognizable claim and the grounds on which  
18 it rests, and although a court must take all factual allegations as true, legal conclusions couched  
19 as factual allegations are insufficient. *See Twombly*, 550 U.S. at 555 (emphasis added). In other  
20 words, Rule 12(b)(6) requires “more than labels and conclusions, and a formulaic recitation of  
21 the elements of a cause of action will not do.” *Id.* “To survive a motion to dismiss, a complaint  
22 must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible  
23 on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). A  
24 claim has facial plausibility when the factual content pled “allows the court to draw the

reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Under this standard “more than a sheer possibility [must exist] that a defendant has acted unlawfully.” *Id.*

Plaintiffs’ claims are furthermore subject to Rule 9(b)’s heightened pleading standard because they sound in fraud. *See, e.g.,* Compl. at ¶¶ 71–79. Rule 9(b) requires a plaintiff to “state with particularity the circumstances constituting fraud.” *See McAteer v. Sunflower Bank, N.A.*, 2021 U.S. Dist. LEXIS 183142, at \*5–6 (D. Nev. Sep. 24, 2021). A plaintiff must provide the “who, what, when, where, and how” of the fraudulent actions. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (quotation omitted). This requires “more than the neutral facts necessary to identify the transaction,” including “what is false or misleading about a statement, and why it is false.” *Id.* (quotation omitted).

This Court should dismiss Kendalle and KPG Investment’s claims for several reasons.

**I. The alleged “fraud” fails to include specificity and plausibility.**

First, Plaintiffs’ complaint fails to include the necessary details to state a claim for fraud (**Second Cause of Action**).<sup>10</sup> *See* Fed. R. Civ. P. 9(b). Plaintiffs’ basic assertion is that Ms. Sonn (a) proposed terms in the Second Incentive Award Letter agreement that were purportedly “unusual,” not “standard,” or else not in the best interests of KPG Investments and Kendalle Getty, which the KPG Complaint characterizes as “false representations”; and (b) orally misrepresented the total amount of the incentive award as being \$2 million, when the 2-page letter stated that it would be \$2.5 million. (KPG Compl. ¶¶ 28, 40–44, 56, 72–74.)

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<sup>10</sup> The causes of action in the KPG Complaint under the 2021 compensation agreement are purportedly governed by the agreement’s narrow Nevada choice of law provision. However, Ms. Sonn’s retaliation claims (in the Sonn Complaint) arise independently and should be construed under California or New York law. *See Morgan v. Bash*, 2021 WL 601871, at \*2 (D. Nev. Feb. 16, 2021).

1 But none of these assertions explain why Ms. Sonn’s proposed terms to the Second letter  
 2 agreement were “unusual,” not standard, or otherwise unfair. The persons purportedly  
 3 identifying the terms as “unusual” are not identified. No date, time, location, or means of  
 4 communication is identified. Likewise, no facts are included explaining why Ms. Sonn’s  
 5 proposed terms were “false” (i.e., not otherwise standard, fair, or in the best interests of the  
 6 Plaintiffs). In short, the “who, what, when, where, and how” of the purportedly fraudulent  
 7 actions, are missing. *Vess*, 317 F.3d at 1106 (a plaintiff, consistent with Rule 9, must identify  
 8 “what is false or misleading about a statement, and why it is false.”).<sup>11</sup>

9 *Second*, if there had been something wrongful about the *amount* of compensation under  
 10 the revised agreement, something would have been said in the previous four years. But nothing  
 11 adverse was said. Indeed, the compensation in the 2021 agreement was in line with industry  
 12 standards and was, likely, *less* than would have been received under the 2017 agreement.

13 Similarly, to the extent Ms. Sonn allegedly orally “misrepresented” the amount of the  
 14 total payment, it was unreasonable for Plaintiffs to rely on such a statement. As noted above,  
 15 Kendalle could have read the first page of the two-page Second Incentive Award Letter  
 16 agreement to see what the proposed total amount would be. Kendalle could have also (if she did  
 17 not do so already) reach out to her own legal counsel. In other words, it is implausible to believe  
 18 that Kendalle would feel pressured to either disregard reading the two-page agreement or else  
 19 \_\_\_\_\_

20 <sup>11</sup> Even accepting Plaintiffs’ purported facts, the payment of \$2.5 million for managing and  
 21 providing financial advice for the Pleiades Trust—valued at over \$1 billion—was fair. Under an  
 22 “assets under management” fee structure, a financial advisor fee of 1% for an investment  
 23 portfolio of \$1 million is common. *See, e.g.,* U.S. News, *What to know about Financial Advisor*  
 24 *Fees and Costs* (Jan. 19, 2023), [https://money.usnews.com/financial-advisors/articles/financial-](https://money.usnews.com/financial-advisors/articles/financial-advisor-fees-and-costs)  
[advisor-fees-and-costs](https://money.usnews.com/financial-advisors/articles/financial-advisor-fees-and-costs). And for very large accounts, that percentage may decrease “to as low as  
 0.25%”. *Id.* Here, applying such a model to Ms. Sonn, results in an even lower percentage fee of  
 0.24% (i.e., \$2.5 million incentive award / \$1.035 billion in Pleiades Trust assets = 0.24%).

1 forget to contact her own personal counsel, because of some unidentified “stressful issues in her  
2 personal life” that Ms. Sonn had no part in creating.

3 The KPG Complaint portrays the revised 2021 compensation agreement as somehow  
4 inherently wrongful, in that it provides for compensation even if Ms. Sonn were terminated. This  
5 agreement, however, properly achieved certainty for Ms. Sonn for her *already* performed and  
6 earned employment. And, as noted above, it avoided the uncertainty under the 2017 agreement  
7 that she could have been discarded at any time and ultimately not receive this compensation.

8 In short, Plaintiffs’ fraud claim fails to state a claim, much less include the level of detail  
9 required under Rule 9. Accordingly, dismissal is appropriate here.

10 **II. Plaintiffs’ negligent misrepresentation claim fails.**

11 For similar reasons, Plaintiffs’ negligent misrepresentation claim (**Third Cause of**  
12 **Action**) also fails. Under Nevada law, a claim for negligent misrepresentation requires a plaintiff  
13 to plead (1) the defendant made a false representation; (2) the defendant made the representation  
14 during its course of business or in an action in which it had a pecuniary interest; (3) the  
15 defendant made the representation for the guidance of others in their business transactions; (4)  
16 the plaintiff justifiably relied on the representation; (5) the reliance resulted in pecuniary loss to  
17 the plaintiff; and (6) the defendant did not exercise reasonable care or competence in obtaining  
18 or communicating the information. *G.K. Las Vegas Ltd. P’ship v. Simon Property Group, Inc.*,  
19 460 F. Supp. 2d 1246, 1262 (D. Nev. 2006); *see also* Restatement (Second) of Torts § 552  
20 (1977); *McAteer v. Sunflower Bank, N.A.*, 2021 U.S. Dist. LEXIS 183142, at \*13–14 (D. Nev.  
21 Sep. 24, 2021).

22 Here, as noted above, Plaintiffs’ complaint fails to identify facts sufficient to support a  
23 “false” representation, as required by Rule 9. The persons purportedly identifying the terms as  
24 “unusual” are not identified. No date, time, location, or means of communication is identified.



Likewise, no facts are included explaining why Ms. Sonn’s proposed terms were “false” (i.e., not otherwise standard or fair). *See id.* In short, the “who, what, when, where, and how” of the purportedly fraudulent actions, are missing. *Vess*, 317 F.3d at 1106 (a plaintiff, consistent with Rule 9, must identify “what is false or misleading about a statement, and why it is false.”). The alleged “fail[ure] to exercise reasonable care of competence in obtaining or communicating ... information to guide Plaintiffs in connection with business transactions” is devoid of facts and only contains conclusions. And it is implausible to believe that plaintiffs KPG Investments and Kendalle would otherwise ignore the plain language of the Second Incentive Award Letter or would not seek their own counsel. In short, Plaintiffs’ negligent misrepresentation claim (Third Cause of Action) fails as a matter of law.

**III. The fraudulent inducement claim lacks the requisite level of detail required by Rule 9 and is furthermore implausible.**

Plaintiffs’ fraudulent inducement and unconscionability claim (**Fourth Cause of Action**) also fails as a matter of law. Simply put, Plaintiffs fail to identify sufficient facts surrounding the purportedly “stressful issues in her personal life” (KPG Compl. ¶ 42), much less any detailed facts surrounding the alleged fraud Ms. Sonn purportedly engaged in to induce Kendalle into signing the Second Incentive Award Letter agreement. At most, Plaintiffs allege that through unspecified “oral conversations and written communications”—none of which include any specific dates, means of communication (e.g., email, phone call, text message, etc.), or locations—Ms. Sonn is then alleged to have asked Kendalle to “hurry and sign” the Second Incentive Award letter agreement. (*Id.* ¶ 45.) The absence of such factual details underscores that Plaintiffs’ claims are unfounded and should be dismissed.

Plaintiffs’ claims of substantive and procedural unconscionability similarly lack any supporting facts. (*Id.* ¶¶ 94–96, suggesting that Plaintiffs lacked a meaningful opportunity to

1 consider the Second Incentive Award Letter’s terms, and that the proposed compensation award  
2 was so “one-sided and oppressive as to constitute substantive unconscionability”). Again,  
3 nothing in Plaintiffs’ complaint explains why such terms might be unconscionable. (To the  
4 contrary, and as explained earlier, such terms seem to be an appropriate, fair recognition of Ms.  
5 Sonn’s “great work” on behalf of Plaintiffs.)

6 Accordingly, this Court should reject Plaintiffs’ fraudulent inducement and  
7 unconscionability claim for Plaintiffs’ failure to include the requisite particularity (e.g., time,  
8 place, means of communication, etc.) and why such agreed-to terms were so unfair. *See, e.g.,*  
9 *Gala v. Britt*, 2010 U.S. Dist. LEXIS 133429, at \*12–13 (D. Nev. Dec. 15, 2010) (granting  
10 defendants’ motion to dismiss with prejudice as to plaintiffs’ fraudulent inducement claim for  
11 failure to meet the requirements of Rule 9(b)).

#### 12 **IV. Plaintiffs’ duplicative claims should be dismissed.**

13 Plaintiffs’ claim for breach of fiduciary duty (**First Cause of Action**) is furthermore  
14 duplicative of Plaintiffs’ claim for alleged breach of the implied covenant of good faith and fair  
15 dealing (Fifth Cause of Action).

16 Here, Plaintiffs’ alleged misconduct under both claims is virtually identical. As a result,  
17 this Court should dismiss Plaintiffs’ claim for breach of fiduciary duty (First Cause of Action).  
18 *See Lake at Las Vegas Inv’rs Grp., Inc. v. Pac. Malibu Dev. Corp.*, 867 F. Supp. 920, 924 (D.  
19 Nev. 1994) (finding that a breach of fiduciary duty claim is redundant of a breach of contract  
20 claim, and dismissing such breach of fiduciary duty claim under Rule 12), *aff’d*, 78 F.3d 593 (9th  
21 Cir. 1996); *see also Murray v. Provident Tr. Grp., LLC*, 2019 U.S. Dist. LEXIS 68403, at \*16  
22 (D. Nev. Apr. 23, 2019). Plaintiff’s alleged claim for tortious breach of the implied covenant of  
23 good faith and fair dealing (**Sixth Cause of Action**, *see* KPG Compl. ¶ 111) is furthermore  
24 duplicative of Plaintiffs’ alleged claims for fraud, fraudulent inducement, and unjust enrichment

(Second, Fourth, and Seventh Causes of Action). Accordingly, such claim should also be dismissed.

**V. Plaintiffs’ unjust enrichment claim fails because an express written contract exists between the parties.**

Plaintiffs’ unjust enrichment claim (**Seventh Cause of Action**) should also be dismissed. “An action based on a theory of unjust enrichment is not available when there is an express, written contract, because no agreement can be implied when there is an express agreement.” *Ins. Co. of Pa. v. Three Square*, 2016 U.S. Dist. LEXIS 144071, at \*5–6 (D. Nev. Oct. 18, 2016) (citing *Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975*, 113 Nev. 747, 755 (1997)). As explained by Nevada’s highest court in *Leasepartners*, “[t]he doctrine of unjust enrichment or quasi contract applies to situations where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another [or should pay for].” *Id.* at 756.

But because an express, legal contract exists here—i.e., 2021 compensation agreement (and the Employment Agreement and the First Incentive Award Letter agreement) (*see* KPG Compl. Exs. 1–3)—a claim for unjust enrichment must be dismissed. *See, e.g., Ins. Co. of Pa.*, 2016 U.S. Dist. LEXIS 144071, at \*5–6 (dismissing unjust enrichment claim where an express, legal contract exists); *Dunham Tr. Co. v. Wells Fargo Bank, N.A.*, 2019 U.S. Dist. LEXIS 20350, at \*19–20 (D. Nev. Feb. 7, 2019) (“It is well established that there cannot be a claim for unjust enrichment where a contract governs the parties’ relationship to each other.”).<sup>12</sup> In short, Plaintiffs’ unjust enrichment claim fails.

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<sup>12</sup> Even assuming *arguendo* that no contract exists (which is plainly not the case here, *see* KPG Compl. Exs. 1–3)), plaintiffs’ complaint fails to state a claim for unjust enrichment—the elements of which are as follows: (1) a benefit conferred on the defendant by the plaintiff; (2) (continued...)

**VI. Plaintiffs’ declaratory relief claim is a remedy, and not a stand-alone claim.**

Finally, this Court should also dismiss Plaintiffs’ “Eighth Cause of Action” for declaratory relief. *See* KPG Compl. ¶¶ 119–26. This is because declaratory relief “is merely a remedy, not a stand-alone cause of action.” *Players Network, Inc. v. Comcast Corp.*, 2015 U.S. Dist. LEXIS 12630, at \*22 (D. Nev. Feb. 2, 2015); *see also* *Nguyen v. Washington Mut. Bank, N.A.*, 2013 U.S. Dist. LEXIS 106500, at \*5 (D. Nev. July 24, 2013) (declaratory relief “is merely a remedy available for established causes of action, and is not itself a separate cause of action”).

Accordingly, this Court should dismiss Plaintiffs’ Eighth Cause of Action.

**CONCLUSION**

For all the foregoing reasons, Ms. Sonn asks this Court to grant her motion to dismiss the **First, Second, Third, Fourth, Sixth, Seventh, and Eighth** causes of action.<sup>13</sup>

Dated: February 8, 2023  
New York, NY

Respectfully submitted,

POLLOCK COHEN LLP

By: /s/ Adam Pollock

appreciation by the defendant of such a benefit; and (3) acceptance and retention by the defendant of such a benefit. *See Chemeon Surface Tech., LLC v. Metalast Int’l, Inc.*, 312 F. Supp.3d 944, 956 (D. Nev. 2018) (citing *Unionamerica Mortg. & Equity Tr. v. McDonald*, 97 Nev. 210 (1981)).

This is because an unjust enrichment claim only lies against a defendant “who has willingly received the plaintiff’s labor or goods without giving anything of equal value in return.” *US Bank, N.A. v. SFR Investment Pool 1*, 2016 U.S. Dist. LEXIS 113120, at \*40 (D. Nev. Aug. 24, 2016). Here, because Plaintiffs do not allege that Ms. Sonn failed to give anything of equal value—e.g., through her management of investment decisions, financial advice, etc.—Plaintiffs’ claim here also fails on these grounds. *See, e.g., Dunham Tr. Co.*, 2019 U.S. Dist. LEXIS 20350, at \*19–20 (dismissing an unjust enrichment claim where it was unclear whether no benefit had been exchanged by the defendant in return).

<sup>13</sup> Ms. Sonn strongly contests all factual allegations made in the KPG Complaint, including those alleged in support of the Fifth cause of action. However, while this cause of action may not be resolvable at the motion to dismiss stage, Ms. Sonn will deny it in her forthcoming Answer (after the decision on the partial motion to dismiss), and expects that it will be dismissed at the Summary Judgment stage.

1 Adam Pollock (admitted *pro hac vice*)  
2 111 Broadway, 18th Floor  
3 New York, NY 10006  
4 Tel.: 212-337-5361  
5 Email: apollock@pollockcohen.com

6 Roger W. Wenthe (SBN 8920)  
7 Roger Wenthe, PLLC  
8 2831 St. Rose Pkwy. # 200  
9 Henderson, NV 89052  
10 Tel.: 702-971-0541  
11 Email: roger.wenthe@gmail.com

12 Counsel for Marlena Sonn  
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